

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
BOROUGH OF FORT LEE, NEW JERSEY)	
)	
Application to Operate a Public Safety Radio)	File No. 0000618828
Communications System in Frequency Band)	
470-480 MHz in Fort Lee, New Jersey)	

ORDER

Adopted: December 30, 2002

Released: December 31, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us an application and a waiver request, filed by the Borough of Fort Lee, New Jersey ("Fort Lee"), for authority to operate a public safety radio system on eight UHF frequencies in the New York Metropolitan area.¹ Fort Lee seeks a waiver, pursuant to Section 337(c) of the Communications Act, as amended (the Act)² of Sections 22.501, 22.621 and 90.303 of the Commission's Rules,³ to use currently unassigned frequencies allotted for non-public safety use.⁴ For the reasons stated below, we grant Fort Lee's waiver request.

II. BACKGROUND

2. Fort Lee is located across the Hudson River from New York City, in Bergen County, New Jersey. It is also the New Jersey terminus of the George Washington Bridge, which connects New York City to New Jersey and New England via Interstate Highway 95.⁵ This two-level, fourteen-lane suspension bridge has an average daily volume of 310,000 vehicles.⁶

¹ See FCC File No. 0000618828, Borough of Fort Lee, New Jersey (filed October 5, 2001)("Request") as amended on May 6, 2002 (in which Fort Lee deleted four frequencies from its application) and August 7, 2002 ("Amended Request").

² 47 U.S.C. § 337(c). Alternatively, Fort Lee seeks a waiver pursuant to Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925.

³ 47 C.F.R. §§ 22.501, 22.621, and 90.303. Fort Lee also requested waiver of any other Commission rules that would prevent the grant of its application. See Request at 1.

⁴ Request at 1.

⁵ *Id.* at 2-3.

⁶ *Id.*

3. Fort Lee's current public safety communications system is a simplex, nine-channel VHF system that it has operated for over thirty years.⁷ During this time Fort Lee's population has expanded and its demographics have changed considerably.⁸ Fort Lee states that these changes have led to an increase in the demand for public safety services, placing a substantial strain on its aging radio system.⁹ Fort Lee presently conducts police communications on 155.6100 MHz, 155.6700 MHz and 155.9850 MHz; fire communications on 154.4450 MHz, 154.3550 MHz, 154.2800 MHz, 153.8300 MHz, 33.8600 MHz and 155.2050 MHz (which is also used for emergency management services communications).¹⁰ Fort Lee states that its radio system is further strained because it operates on frequencies shared with public safety entities from other jurisdictions in the Northern New Jersey area (e.g., Pennsylvania State Police, the municipalities of Cliffside Park, Fairview, and Edgewater, New Jersey.)¹¹ Fort Lee contends that these operational constraints have led to a serious deterioration of the radio system's effectiveness due to excessive channel loading and dead spots, which, in turn, has led to a deterioration of police, fire, and emergency services.¹²

4. On October 5, 2001 Fort Lee proposed to address these problems by replacing its current public safety communications system with a new multi-disciplinary trunked system using 12.5 kHz bandwidth equipment operating on the following six non-public safety frequency pairs: 470.0375 MHz/473.1875 MHz, 470.1125 MHz/473.1625 MHz, 470.2625 MHz/473.2625 MHz, 476.0375 MHz/479.0375 MHz, 476.0875 MHz/479.0875 MHz and 476.2625 MHz/479.2625 MHz.¹³ On November 15, 2001, the Wireless Telecommunications Bureau (Bureau) placed Fort Lee's application and waiver request on public notice.¹⁴ No comments were filed opposing Fort Lee's request. Fort Lee filed reply comments on December 3, 2001.¹⁵

5. On December 19, 2001 Fort Lee made an *ex parte* presentation to the Bureau detailing the increased congestion on its public safety frequencies and the deleterious effect this congestion was having

⁷ *Id.* at 3, 7.

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ See Letter dated December 3, 2002, from Fort Lee to Marlene Dortch, Secretary, Federal Communications Commission.

¹¹ Request at 7.

¹² *Id.* at 3-4. In support of its contentions, Fort Lee details the composition and responsibilities of the municipal entities that rely on its public safety communications system: the Police Department, Fire Department, Fire Prevention Bureau, Ambulance Corps, Emergency Management Office, and Department of Public Works. See *id.* at 4-6. Fort Lee also submitted documentation of twenty-three separate incidents where a police officer or firefighter was unable to communicate over the public safety communications network. See Request, Appendix B.

¹³ Request at 2.

¹⁴ See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by Fort Lee, New Jersey, Police Department to Obtain a Public Safety License for Twelve UHF Paging Control Frequencies, *Public Notice*, 16 FCC Rcd 20186 (WTB PSPWD 2001).

¹⁵ See Reply Comment of the Borough of Fort Lee, New Jersey, filed Dec. 3, 2001 ("Reply Comment").

on its public safety communications.¹⁶ On January 30, 2002, Fort Lee made a second *ex parte* presentation to the Bureau to address concerns that incumbent licensees existed on some of the requested channels that were not considered in the Request.¹⁷ On May 6, 2002, Fort Lee filed an amendment to delete two of the six frequency pairs, 476.0375 MHz/479.0375 MHz and 476.0875/479.0875 MHz, from its application and to propose conventional instead of trunked operation.¹⁸ In this connection, Fort Lee stated that the reduction from six to four channel pairs would preclude it from operating a trunked system.¹⁹

6. As the frequencies in question are not designated for public safety use, Fort Lee's proposal necessitates a waiver of Sections 22.7, 22.501, 22.621, 22.651, and 90.311 of the Commission's Rules.²⁰ Fort Lee seeks such a waiver pursuant to Section 337(c) of the Act and Section 1.925 of the Commission's Rules.²¹ In connection with the instant request, Fort Lee has represented that, upon the implementation of its new system, it would surrender for cancellation its existing authorizations to operate on 155.6700 MHz and 155.9850 MHz, designate 155.6100 MHz, 154.4450 MHz, 154.3550 MHz, 154.2800 MHz, 153.8300 MHz, and 33.8600 MHz for interoperability purposes through the elimination of day-to-day communications on these channels, and utilize 155.2050 MHz solely for emergency medical communications.²²

III. DISCUSSION

7. Section 337(c) of the Communications Act of 1934, as amended, (the Act) provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings:

- public safety spectrum is not immediately available;
- the proposed use will not cause harmful interference to protected spectrum users;

¹⁶ See Letter dated December 20, 2001, from Fort Lee to Magalie Roman Salas, Secretary, Federal Communications Commission.

¹⁷ See Letter dated January 31, 2002, from Fort Lee to Magalie Roman Salas, Secretary, Federal Communications Commission.

¹⁸ See *generally* Amended Request, *supra* note 1.

¹⁹ Amended Request at 3, fn. 1.

²⁰ 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, and 90.311. Section 22.7 limits eligibility to operate on Part 22 frequencies to common (*i.e.*, commercial) carriers. Section 22.501 defines the scope of the licensing and operation of the public paging and radiotelephone service. Section 22.621 requires the use of point-to-multipoint operation on two of the requested frequency pairs. Section 22.651 requires the use of trunked mobile operations on the other two frequency pairs requested. *But see* 47 C.F.R. § 22.655 (FCC is redesignating public mobile channels in the 450-470 MHz range from trunked mobile operation to point-to-multipoint operation as the demand for trunked mobile service decreases). Section 90.311 excludes frequencies in the 470-512 MHz range from assignment to private land mobile radio applicants if the frequencies are allocated for services under Part 22.

²¹ See 47 U.S.C. § 337(c), 47 C.F.R. § 1.925.

²² See Letter dated December 3, 2002 from Fort Lee to Marlene Dortch, Secretary, Federal Communications Commission and Request at 10. As Fort Lee correctly notes these steps would provide significant relief to the other public safety entities sharing these frequencies.

- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- grant of the application is consistent with the public interest.²³

8. Public safety services are services whose principal purpose is to protect the safety of life, health, or property, provided by governmental entities whose primary mission is the provision of such services, or by non-governmental entities authorized by such a governmental entity, and that are not made commercially available to the public.²⁴ Based on record before us, we find that Fort Lee is an entity providing public safety services.²⁵ We therefore move to examining whether Fort Lee meets the statutory requirements supporting a waiver under Section 337(c) of the Act.

9. *Immediate availability of public safety spectrum.* Fort Lee contends no public safety spectrum is immediately available that would support its proposed radio system.²⁶ In support of its contention, Fort Lee submitted a spectrum analysis report compiled by an engineering consulting firm.²⁷ This report made the following observations:

- The 150-160 MHz band does not contain available frequencies for meeting Fort Lee's operational requirements;
- The Part 90 470-473 MHz and 476-479 MHz bands contain 12.5 kHz bandwidth channels, but these frequencies are not available because they cannot be coordinated due to the close proximity of existing co- or adjacent channel users.
- The 806-821 MHz, 821-824 MHz, 851-866 MHz bands, and 866-869 MHz bands do not have unassigned channels;
- The 764-776 and 794-806 MHz bands, while designated for public safety use, are not immediately available for Fort Lee because of existing television broadcast stations.²⁸

The spectrum analysis report is supported by an FCC-certified public safety frequency coordinator (Association of Public-Safety Communications Officials International, Inc.)²⁹ and Fort Lee's Regional

²³ See 47 U.S.C. § 337(c).

²⁴ See 47 U.S.C. § 337(f).

²⁵ See Application of Nassau County Police Department, *Memorandum Opinion and Order*, 17 FCC Rcd 14252, 14258 ¶ 11 (2002).

²⁶ Request at 12.

²⁷ See generally Request, Appendix A.

²⁸ Request, Appendix A at 2-3.

²⁹ Request, Attachment D.

Planning Coordinator (Regional Planning Committee-Region 8).³⁰ Based on the record before us, we concur with Fort Lee's contentions and find that no other public safety spectrum is immediately available to satisfy the requested public safety service use.

10. *Technical feasibility of requested use without causing harmful interference.* Fort Lee's proposed frequencies are in the 470-480 MHz band, which is allocated on a geographically-shared basis with Television Broadcast stations.³¹ In the New York metropolitan area, the Commission regulates the eight requested frequencies under Part 22 of its Rules.³² Specifically, the Commission has designated two of the four frequency pairs requested herein for point-to-multipoint transmitters used to support transmitters that provide public mobile service, *e.g.*, paging control.³³ The other two frequency pairs requested herein are designated for trunked mobile operations, although the Commission is redesignating channels in this range to point-to-multipoint operation as demand decreases for trunked mobile operations.³⁴ Our engineering review of Fort Lee's application reveals that the operational and technical parameters of its proposed system meet the Commission's requirements for interference protection to incumbent licensees. Moreover, we note that the potential for interference to adjacent channel users, licensed under Part 22, is further diminished because Fort Lee will use 12.5 kHz bandwidth equipment on frequencies designated under Part 22 for 20 kHz bandwidths.³⁵ We therefore find that Fort Lee's proposed system is technically feasible and will not cause harmful interference to protected spectrum users.

11. *Public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area.* As Fort Lee correctly points out, the frequencies it proposes to use in its public safety communications system are within a frequency band where public safety mobile operations are authorized, and more importantly are currently being used by other public safety agencies in the New York metropolitan area (*e.g.*, the New York City Police Department, the Nassau County Police Department and the Bergen County Police Department).³⁶ We therefore find that the use of the unassigned frequency pairs for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made. Moreover, because other agencies in the New York metropolitan area are using these frequencies, we believe that granting the request will promote interoperability capability among the public safety community in this area.

³⁰ Request, Attachment C.

³¹ Frequencies in the 470-512 MHz band, normally assigned to UHF Television channels 14 through 20, were made available for land mobile use in 11 cities in the early 1970's in the "UHF-TV Sharing" proceeding. *See* Land Mobile Use of TV Channels 14 through 20, Docket No. 18261, *Report and Order*, 23 FCC 2d 325 (1970).

³² 47 C.F.R. § 22.1 *et. seq.*

³³ *See* 47 C.F.R. §§ 22.621-22.627. As noted, the captioned application initially requested six frequency pairs but Fort Lee subsequently deleted two of the six frequency pairs requested. *See supra* ¶ 5.

³⁴ *See* 47 C.F.R. §§ 22.621, 22.651, 22.655.

³⁵ *See* 47 C.F.R. § 22.621.

³⁶ Request at 14.

12. *The frequencies have been allocated for non-public safety use for more than two years.* The Commission allocated these frequencies for non-public safety use in 1994.³⁷ Thus, these frequencies have been allocated for their present use for more than two years.

13. *Granting this application is consistent with the public interest.* Based on the record in this proceeding, we believe that Fort Lee's filings demonstrate that access to additional spectrum is needed in order to promote effective public safety communications. As described by Fort Lee, public safety communications in the Fort Lee area are limited because of the lack of available frequencies and this limited communications capability has potentially placed the safety of public safety personnel at risk.³⁸ We believe that it would further the public interest by affording Fort Lee's public safety community the opportunity to obtain necessary spectrum to allow it to safely protect the lives and property in its care. Indeed, Section 1 of the Act defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of...radio communication."³⁹ We also find that Fort Lee's commitment to surrender some of its existing, shared VHF authorizations and reduce the traffic on the remaining shared VHF authorization serves the public interest by easing the congestion on these shared channels in the New York City metropolitan area. Additionally, we find it significant that granting the instant request will promote interoperability capability among the public safety community in the New York metropolitan area.

IV. CONCLUSION

14. We find that Fort Lee's Request satisfies the criteria set forth under Section 337(c) of the Act to obtain a grant of its application to operate a public safety communications system on frequencies in the 470-480 MHz band. We therefore grant Fort Lee's Request for Waiver.⁴⁰

³⁷ See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket 92-115, *Report and Order*, 9 FCC Rcd 6513 (1994).

³⁸ See generally Request, Appendix B.

³⁹ 47 U.S.C. § 151.

⁴⁰ In view of the conclusion that a grant of a waiver for Fort Lee is warranted under Section 337(c) of the Act, we need not reach the question of whether Fort Lee's waiver request should be granted under Section 1.925(b)(3) of the Commission's Rules.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), the request for waiver associated with the captioned application filed by the Borough of Fort Lee on October 5, 2001, as amended, to use frequencies 470.0375 MHz/473.1875 MHz, 470.1125 MHz/473.1625 MHz, 470.2625 MHz/473.2625MHz, and 476.2625 MHz/479.2625 MHz for public safety services as requested in the captioned application **IS GRANTED**.

16. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), that the Licensing and Technical Analysis Branch SHALL PROCESS File No. 0000618828 consistent with this Order and the Commission's Rules.

17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0131, 0331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
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